Testimony to the Aging Committee

Presented by Mag Morelli, President, LeadingAge Connecticut

March 3, 2022

Regarding

- **Senate Bill 172, An Act Concerning Criminal Penalties for Abuse, Abandonment and Financial Exploitation of Elderly Persons, Persons with Disabilities or Conserved Persons**

- **Senate Bill 175, An Act Expanding Eligibility for the Alzheimer's Disease Respite Care Program and Supporting Aging in Place**

- **House Bill 5193, An Act Concerning Rent Increases, Fee Increases and Changes in Residency Status at Continuing Care Facilities and Managed Residential Communities**

- **House Bill 5194, An Act Concerning Registration of Temporary Nursing Services Agencies**

- **House Bill 5195, An Act Requiring Nursing Home Facilities to Electronically Report Involuntary Transfers or Discharges to the State Ombudsman**

- **House Bill 5159, An Act Concerning Electronically Reporting of Involuntary Transfers or Discharges by Residential Care Homes**

Good morning, Senator Miller, Representative Garibay and Members of the Committee. My name is Mag Morelli and I am the President of LeadingAge Connecticut, a membership association representing not-for-profit provider organizations serving older adults across the entire field of aging services and senior housing including nursing homes, home health care agencies, continuing care retirement communities, assisted living communities and senior housing, I am pleased to present the following testimony on several of the bills that are before you today.

Senate Bill 172, An Act Concerning Criminal Penalties for Abuse, Abandonment and Financial Exploitation of Elderly Persons, Persons with Disabilities or Conserved Persons

Senate Bill 172, Sections 1 through 4, propose to update various existing statutes dealing with the abuse and financial exploitation of persons who are elderly, conserved or disabled. The current statutes classify these actions as crimes when they are knowingly, intentionally,

recklessly or willfully inflicted upon such a person. LeadingAge Connecticut supports efforts to prevent, detect and punish abuse and financial exploitation of individuals who are elderly, conserved or disabled. However, there are aspects of this bill that we oppose.

The bill proposes to add a new class C felony, as outlined in Section 5, for *abandonment by a caregiver.* The proposed language contains no requirement of criminal intent for abandonment, and therefore we must oppose Section 5.

The term "abandonment" is broadly defined to involve "the foregoing of duties or the withdrawal or neglect of duties and obligations owed by a caregiver to an elderly person or person with disability, including, but not limited to, a failure to provide services that are necessary to maintain the physical and mental health of such person." A caregiver can be found guilty when such abandonment causes physical injury or "mental anguish," a term that is not defined and also proposed to be inserted in Section 2 of the bill. Without any criminal intent requirement and based on a broad definition of "abandonment" and lack of statutory guidance on how "mental anguish" is to be defined, a caregiver could be charged and found guilty of abandonment for situations that might not even be actionable as civil negligence.

We request consideration for inclusion of language to specify criminal intent on the part of the caregiver in Section 5, and amended language to include a definition of "mental anguish" affecting this Section and Section 2 as well. Unfortunately, without these changes, we respectfully cannot support this bill.

Senate Bill 175, An Act Expanding Eligibility for the Alzheimer's Disease Respite Care Program and Supporting Aging in Place

LeadingAge Connecticut is supportive of the Committee's efforts to increase the funding for the Connecticut Home Care Program for Elders and to expand the eligibility for the Alzheimer's Respite Program. We strongly believe in the principle of ensuring choice for persons seeking long term services and supports and we know that a strong and balanced continuum of care that provides the right care, in the right place, at the right time will lead to a more efficient and effective care delivery system.

This bill would also increase the funding for the respite program which is needed to expand access to more individuals and their families. Many elders with dementia live within their own homes for many years with the majority of the caregiving being provided by a spouse, relative, or close friend. These unpaid caregivers provide countless hours of unpaid long-term care, services and supports. They are the true heroes of our long-term services and supports system and providing them with needed respite is not only the right thing to do, but it is the prudent thing to do as they save our Medicaid program millions of dollars every year.

House Bill 5193, An Act Concerning Rent Increases, Fee Increases and Changes in Residency Status at Continuing Care Facilities and Managed Residential Communities

We present this testimony in opposition to this bill. We do not know the specific circumstances that prompted this legislative proposal, but we believe that the issues raised in the bill are either already addressed in statute or would impose unnecessary and unwarranted regulatory requirements in these residential settings on matters that are already appropriately addressed in contracts.

The bill addresses two different senior living settings and two very different contractual arrangements, the Continuing Care Retirement Community (CCRC) and the Assisted Living Managed Residential Community (MRC). Following is a description of each setting and then a discussion of the bill's proposals concerning fee caps and transitions in care.

Continuing Care Retirement Communities (CCRC)

CCRCs are communities that offer independent living and a full continuum of care and services for older adults on one campus. While there are a variety of types of CCRCs, generally they are multi-building campuses or large single buildings that provide independent living, supportive health services such as skilled nursing and assisted living services, and other amenities and services such as dining, transportation, activity programs, exercise facilities, as well as housekeeping and laundry services. A CCRC resident enters into a comprehensive contractual agreement with the CCRC and moves in as an independent living resident. The contract is not a lease. It provides the resident with the right to live in an independent living unit, to receive certain services and amenities and to have access to health care services when needed in the future. CCRC contracts are annually disclosed to the state, and the resident funds their independent living and long-term care privately through entrance payments and monthly fees.

In Connecticut, CCRCs are overseen by the Department of Social Services and the licensed health care services provided by a CCRC are overseen by the Department of Public Health. Because the model is based on a contractual agreement between the resident and the CCRC, our laws and regulations are heavily weighted toward disclosure and transparency for the consumer. All CCRCs must register with the Department of Social Services and must comply with numerous disclosure, contracting, reporting and financial requirements. The state laws governing CCRCs were updated in 2015 and a resident's bill of rights, along with other transparency and contracting provisions, were incorporated into the statutes at that time. See, Conn. Gen. Stat. § 17b-520 et seq.

The CCRC resident is someone who has made a thoughtful financial and lifestyle decision to enter a CCRC and does so as an independent resident of the community. The situations that appear to be anticipated by this legislative proposal are not the experience of the CCRC resident.

Assisted Living Managed Residential Communities (MRC)

An MRC offers rental units and is therefore governed by landlord tenant law. An MRC resident may (but is not required to) receive assisted living services from a licensed assisted living service agency (ALSA). Our state's unique model of assisted living allows us to provide such services in both market rate and affordable units. Also, MRCs vary in type. Some MRCs are

communities where people live independently with only a subset of residents receiving ALSA services. In other communities, all MRC residents receive ALSA services.

In addition to being governed by landlord tenant laws, MRC agreements must contain certain terms required by statute, and MRC residents are also required to receive an MRC resident's bill of rights that is specifically outlined in statute and was recently amended in 2021. See Conn. Gen. Stat. § 19a-693 et seq., as amended by Public Act No. 21-55. It is important to note that rent and other fees, particularly for assisted living services, may vary from one community to the other. Some communities charge for rent separately from assisted living services, and the assisted living charges may vary depending on the level of assistance required. Other communities may charge a single monthly fee that covers both rent and the assisted living services.

Capping of Fees

The proposal to cap fees and charges does not fit the CCRC model which is based upon a detailed and extensive contractual agreement between the CCRC and the resident. Moreover, there is no "rental fee," as referenced in lines 45-47 because, as noted above, the arrangement between the CCRC and the resident is not a rental arrangement. Instead, the CCRC charges an entrance fee, which may be refundable in part, or applied over a set time period, as well as a monthly service fee. These fees combined cover use of the living unit and other amenities and services, as well as the priority access to health care services when needed.

We oppose the placing of any price caps on this private pay model. The consumer price index (CPI) does not adequately reflect long-term care costs and places an arbitrary cap on costs that are already noticed and disclosed to both existing and prospective residents. Moreover, the obligation to provide 90 days' notice for any increase in fees is untenable. Most CCRCs make decisions about annual increases in fees as part of the yearly budgeting process where it is important to consider projected operating costs as well as actual and anticipated revenues from prospective residents entering into new contracts. Current statutes require 30 days' advance notice of any fee increases, which is workable given that CCRCs must carefully analyze budgetary needs in a timely fashion, close enough to the beginning of their fiscal year.

CCRCs know that their residents are sophisticated and savvy consumers. For this reason, CCRCs are attentive to providing timely notice and opportunity for explanations and discussion about fee increases. Both prospective residents and current residents must receive a copy of the CCRC's Disclosure Statement, which is updated annually and contains detailed information about all fees that are charged as well as historical fees for the prior five years. Prospective residents can track this information to see the pattern of increases over time before they decide on whether or not to enter the community. In addition, CCRC Disclosure Statements are posted publicly on the Department of Social Services' website: Continuing Care Facility Reimbursement--Disclosure Statements (ct.gov). CCRC residents can therefore compare fees and fee increases at different communities.

Similarly, the proposal to cap the MRC fee increases by the CPI does not recognize the rising costs incurred at this setting, which can vary widely depending on the types of fees involved

and how they are charged. In addition, unlike the CCRC model, the MRC model exists both in primarily private pay settings and in affordable housing settings. Any effort to control the noticing of MRC unit rental increases must recognize both the market rate and the affordable settings.

Notice Provisions and Transitions of Care

Both the CCRC disclosure statement and the CCRC contract are required by current statutes to include the details regarding termination of the contract, either due to death or transfer to another setting. CCRCs are modeled on the continuum of care, and the inherent nature of the CCRC allows for smooth transitions of care. As discussed, the CCRC campus provides the full continuum and is designed with the intent of allowing residents to transition to the appropriate level of care on one campus. Consumers choose the CCRC model for this beneficial design, and the details regarding transitions are outlined in the contract. The proposals contained in the bill related to notice requirements and transitions to skilled care are therefore not necessary in the CCRC model.

Regarding the proposal to regulate the transitions of care within the assisted living MRC setting, it is important to understand how assisted living is regulated in our state. Licensed ALSAs may furnish assisted living health care services only to an individual whose condition is "chronic and stable." This means that once the MRC resident's condition is no longer stable or their condition becomes acute and not chronic, the ALSA must transition the individual to another level of care provider unless the individual is able to obtain 24-hour skilled nursing services in his or her residential unit. The MRC statutes require that the MRC contract address the conditions under which the agreement can be terminated by either party. See Conn. Gen. Stat. § 19a-700.

For this reason, current state law (Sec. 19a-698) prohibits an MRC from entering into a written residency agreement with any individual who requires twenty-four-hour skilled nursing care, unless such individual establishes to the satisfaction of both the MRC and the ALSA that the individual has, or has arranged for, such twenty-four-hour care and maintains such care as a condition of residency if the ALSA determines that such care is necessary.

Moreover, residents of both a CCRC and an MRC have their choice of health care provider. The comprehensive bill of rights for CCRC residents empower the CCRC resident to obtain treatment, care and services from providers who are not affiliated with the CCRC. Similarly, the MRC bill of rights grants the resident the freedom to engage a health care provider of their choice. We therefore do not see any barrier to seeking an independent medical opinion at any time during their residency in either a CCRC or an MRC. As a result, there is no need to legislate a requirement that CCRC or MRC residents be able to receive an independent medical opinion before being transferred. Indeed, it is often the resident's own physician who is making that determination and not a facility physician.

Again, we do not know the specific circumstances that prompted this legislative proposal regarding the provision of continuous skilled nursing care, but if it was an attempt to secure the health and safety of a resident in need of skilled care, we would argue that the current resident

rights established for both settings should address this situation and allow the resident to seek the opinion of a health care provider not affiliated with the CCRC or MRC when the need for a transition to a higher level of care is appropriate. It is the obligation of the provider in both of these settings to ensure the safety of their residents, and we believe that the current statutory construct allows for a collaborative approach to this effort.

House Bill 5194, An Act Concerning Registration of Temporary Nursing Services Agencies

We support this proposal which would require at least a minimal level of accountability of the temporary staffing agencies that are servicing the health care sector. During this pandemic and the resulting staffing crisis, we have heard from providers that staffing agencies may be engaging in price gouging and unscrupulous recruitment practices. The state has found that they have no recourse as these entities are neither licensed nor registered by the state and our current price gouging laws address only goods and not services, such as temporary staffing. We have appealed to the attorney general and to federal authorities regarding the current agency practices, and we would strongly support any legislative efforts to bring reasonable oversight to this sector.

We do believe that there is a need to have this section reconciled with 19a-123, which defines "nursing pool." The statutes in that section at one time required registration and rate regulation and while those requirements were repealed, there are other provisions still intact, such as the requirement that the nursing pool enter into a written agreement with the facility and the statute authorizing court actions and imposition of a penalty. If the proposal does not reconcile with this section of the statutes, there will be a statute dealing with "nursing pool" and another dealing with "temporary staffing agencies," with the definitions very similar. In addition, consistent with the definitions in Section 19a-123, the definition of "temporary nursing services agency should be amended in line 18 to include "limited liability company."

House Bill 5195, An Act Requiring Nursing Home Facilities to Electronically Report Involuntary Transfers or Discharges to the State Ombudsman

Skilled nursing facilities that are certified by the Centers for Medicare and Medicaid are required by federal rule § 483.15 (c) to provide a copy of the involuntary transfer or discharge notice that is provided to the resident, to a representative of the State Long-Term Care Ombudsman. We request that the wording of the bill be revised to reflect the actual federal mandate that is required of skilled nursing facilities, and would suggest the following revision to lines 4-7: *"A facility shall electronically PROVIDE A COPY OF [report] each involuntary or discharge NOTICE to the OFFICE OF THE State LONG-TERM CARE Ombudsman appointed pursuant to section 17a-405, [(1)] in a manner prescribed by the State Ombudsman, WHICH SHALL INCLUDE THE ABILITY TO PROVIDE COPIES OF INVOLUNTARY TRANSFER NOTICES RELATED TO HOSPITAL TRANSFERS IN MONTHLY BATCHES [and (2)]…"*

House Bill 5159, An Act Concerning Electronically Reporting of Involuntary Transfers or Discharges by Residential Care Homes

This bill proposes to create a brand-new reporting requirement for residential care homes. These homes are currently not required to report involuntary transfers or discharges to the State Long-Term Care Ombudsman. There may, however, be a practical reason to share these notices at the request of the resident. We therefore would support the establishment of an electronic portal to allow for the sharing of those notices with the ombudsman so long as the requirement is worded similarly to our proposed language above for lines 6-7 of House Bill 5195.

HB 5197, An Act Concerning a Study of the needs of Senior Citizens
SB 174, An Act Concerning a Study of Long-Term Care Needs

LeadingAge Connecticut has no objection to these proposed bills and would be happy to assist the Committee and the state with such studies. We would like to bring to the Committee's attention the Long-Term Care Planning Committee's newly updated Long-Term Services and Supports Plan entitled *"Balancing the System: Working Toward Real Choice for Long-Term Services and Supports in Connecticut."* We also bring the Committee's attention to the recently updated report on Connecticut's Medicaid Long Term Care Need Projections as well as the Strategic Rebalancing Plan .

Thank you for this opportunity to testify and I would be happy to answer any questions.

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